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June 6, 2011

ENTERED
Office of Proceedings

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Part of
Public Record

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

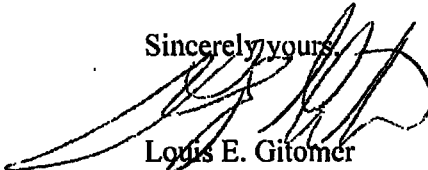
RE: **Finance Docket No. 35517, *CF Industries, Inc. v. Indiana & Ohio Railway Company, Point Comfort and Northern Railway Company, and Michigan Shore Railroad, Inc.***

Dear Ms. Brown:

Enclosed for e-filing by the Indiana & Ohio Railway Company, Point Comfort and Northern Railway Company, and Michigan Shore Railroad, Inc. is the Reply to the Petition for Declaratory Order filed by CF Industries, Inc.

Thank you for your assistance. If you have any questions please call or email me.

Sincerely yours,



Louis E. Gitomer
Attorney for Indiana & Ohio Railway Company,
Point Comfort and Northern Railway Company, and
Michigan Shore Railroad, Inc.

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35517

CF INDUSTRIES, INC.
v.
INDIANA & OHIO RAILWAY COMPANY, POINT COMFORT AND NORTHERN
RAILWAY COMPANY, AND MICHIGAN SHORE RAILROAD, INC.

REPLY OF INDIANA & OHIO RAILWAY COMPANY, POINT COMFORT AND
NORTHERN RAILWAY COMPANY, AND MICHIGAN SHORE RAILROAD, INC.

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Attorneys for: INDIANA & OHIO
RAILWAY COMPANY, POINT
COMFORT AND NORTHERN
RAILWAY COMPANY, AND MICHIGAN
SHORE RAILROAD, INC.

Dated: June 6, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35517

CF INDUSTRIES, INC.
v.
INDIANA & OHIO RAILWAY COMPANY, POINT COMFORT AND NORTHERN
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REPLY OF INDIANA & OHIO RAILWAY COMPANY, POINT COMFORT AND
NORTHERN RAILWAY COMPANY, AND MICHIGAN SHORE RAILROAD, INC.

The Indiana & Ohio Railway Company ("IORY"), the Point Comfort and Northern Railway Company ("PCN"), and the Michigan Shore Railroad, Inc. ("MSR") (collectively "the Railroads"), pursuant to 49 C.F.R. §1104.13(a), respond to and oppose the Petition for Declaratory Order filed pursuant to 5 U.S.C. §554(e) and 49 U.S.C. §721 by CF Industries, Inc. ("CFI") on May 17, 2011 (the "Petition"). The Railroads respectfully request the Surface Transportation Board (the "Board") to deny the request to open a proceeding and deny the request that certain tariffs issued by the Railroads concerning the safe handling of commodities generally known as Toxic Inhalation Hazards and Poison Inhalation Hazards ("TIH/PIH") are invalid and unenforceable in light of the rules at 49 C.F.R. Part 174 (the "Rules").

CFI seeks improperly to use the declaratory order process to have the Board declare invalid and unenforceable: (1) IORY Tariff 0900 issued by the IORY on May 6, 2011; (2) PCN Tariff 0900 issued by the PCN on May 6, 2011; and (3) MSR Tariff 0900 issued by the MSR on

May 6, 2011.¹ The three tariffs are identical and provide requirements for the safe movement of TIH/PIH over the Railroads.

CFI also seeks a declaration that implementation of the non-binding PowerPoint Presentation made by RailAmerica, Inc. ("RailAmerica"), the non-carrier parent of the Railroads, titled "TIH/PIH Standard Operating Practice" ("PowerPoint Presentation") is invalid and unenforceable. CFI takes issue with two restrictions in the PowerPoint Presentation, the 10 mile per hour speed restriction and the need to seek a permit from the Railroads five business days before the cars are interchanged to the Railroads.²

The Railroads maintain that: (1) the declaratory order process is inappropriate in evaluating the Tariffs and that CFI should be required to file a complaint that the Tariffs are an unreasonable practice³; (2) there is no case or controversy that needs to be resolved under the declaratory order process and the PowerPoint Presentations of no force and effect, having been superseded by the Tariffs; and (3) the complaint that the charges under the Tariffs are "excessively ... costly" (Petition at 5) is nothing more than a thinly veiled rate reasonableness complaint and should be prosecuted as such by CFI under 49 U.S.C. §§10701 and 10707.

Moreover, CFI has not presented any factual basis for its unsupported conclusion that the Tariffs

¹ Collectively IORY Tariff 0900, PCN Tariff 0900, and MSR Tariff 0900 are referred to as the "Tariffs."

² Although the PowerPoint Presentation uses the word "permit", the Tariffs use the word "notice" and clearly describe a simple notice requirement so that the Railroads can ensure that a car containing TIH/PIH products is not sitting on a track without Railroads' knowledge and waiting to be interchanged or, worse, interchanged without some prior knowledge, both of the foregoing having occurred on railroads within the United States. It is important to note that while the unenforceable PowerPoint Presentation used the word "permit", the subsequent enforceable Tariffs do not. Thus, to be clear, CFI is petitioning the Board to declare that the contents of a PowerPoint presentation are invalid even though the Tariffs do not contain the language to which CFI objects.

³ By attempting to invoke the declaratory order process, CFI is also evading the appropriate filing fee for an unreasonable practice complaint, thereby seeking subsidy from the American tax payer for its unwarranted complaint.

and PowerPoint Presentation are “invalid and unenforceable” (Petition at 7). It is clear that the Tariffs, which have superseded the PowerPoint Presentation, are in compliance with the Rules and reasonable.

The declaratory order process is inappropriate.

CFI is seeking a determination that the Tariffs are an unreasonable practice by way of a declaratory order proceeding rather than filing a formal complaint under 49 U.S.C. §10702(b). The Railroads urge the Board to deny CFI’s petition for declaratory order because a formal complaint alleging an unreasonable practice under 49 U.S.C. §10702 is a more appropriate forum for the relief CFI seeks, although even that relief is not warranted. Where there is a more specific provision that “governs the behavior at issue and its effects”, the Board has required the complainant to use the more specific provision rather than a more general provision. *Entergy Arkansas, Inc. and Entergy Services, Inc., v. Union Pacific Railroad Company and Missouri & Northern Arkansas Railroad Company, Inc.*, STB Docket No. 42104 (STB served June 26, 2009) slip op. at 1-2.

CFI has not presented a case or controversy to be resolved.

CFI appears to have two complaints concerning the tariffs. First, CFI contends that it is required “to fill out Appendix A” (Petition at 4). Second, CFI contends that the Tariffs “through the proposed implementation procedures contained in the PowerPoint Presentation” impose “a number of new purported operational safety measures, including special train service, that are excessively burdensome and costly.” Petition at 5.

It is apparent that CFI is attempting to create a controversy by imposing the requirements of the PowerPoint Presentation on the Tariffs. However, CFI cannot do this. Although the

Board allows tariffs to incorporate outside materials,⁴ the Tariffs **do not** incorporate the PowerPoint Presentation by reference. Since the PowerPoint Presentation is not incorporated in the Tariffs, the tariffs are to be interpreted according to the reasonable construction of their language, *Newton Gum Co. v. Chicago B. & Q. R. Co.*, 16 I.C.C. 341; the tariffs are to be construed according to their terms and the intention of the framers is not controlling, *Goe. C. Speir & Co., Inc. v Atlanta & W.P.R. Co*, 151 I.C.C. 705; and the tariffs must be applied according to the plain language employed, *Kenner Truck Farmers' Assn. v. Illinois Central R. Co.*, 32 I.C.C. 1. This precedent is clear that the non-binding PowerPoint Presentation does not govern the implementation or the interpretation of the Tariffs. The only requirements imposed on CFI are through the Tariffs themselves.

CFI has done nothing more than state that the Tariffs require it to prepare and submit a notice. CFI does not indicate that the preparation of the notice is a burden or that it would take substantial time to complete. Nor has CFI explained why preparing and sending a simple notice ahead of the shipment would be “costly”. Indeed, a review of the notice (See the Petition, Exhibit A, B, or C, Appendix A) shows a one page form requesting information that CFI must have readily available when it tenders a shipment. The Railroads would be surprised if would take 30 minutes to fill out the notice and fax it to the appropriate railroad. When commencing the shipment of TIH/PIH, filling out and faxing such a simple form would not be considered “excessively burdensome and costly” by any reasonable person. There is no case or controversy concerning the notice.

The PowerPoint Presentation is not a tariff and CFI does not contend that it is. The “SOP” referred to in CFI’s petition is a PowerPoint presentation, designed to engender

⁴ *Revision of Tariff Req. Intl. Jt. Through Ocean Car.*, 1 I.C.C. 2d 978, 984 (1985).

discussions with the shippers, that was shared with CFI, among others, as a “**proposal** to modify...policies and procedures for handling TIH/PIH commodities.” Consequently, the PowerPoint Presentation cited by CFI was simply a document intended to propose, address and resolve issues of safety in order to open a dialogue between the Railroads and shippers of TIH/PIH. The Railroads hoped that these discussions would lead to enhanced safety for the movement of CFI’s TIH/PIH, which would benefit all stakeholders, including the employees of the Railroads and the citizens in the communities through which the Railroads transport CFI’s TIH/PIH. The “SOP” referred to in the Petition, only “**recommended**” certain actions, it was not binding and certainly does not supersede published tariffs. Indeed, the black letter case law cited above makes clear that the Tariffs are to be considered without respect to the PowerPoint Presentation since it is neither within the four corners of the Tariffs, nor is it incorporated by reference in the Tariffs. Since the PowerPoint Presentation does not govern the handling of TIH/PIH under the Tariffs, it does not create a case or controversy. CFI is merely referring to the SOP to create unnecessary and unproductive noise meant to distract the Board from reviewing the actual documents – the Tariffs – that govern the movement of TIH/PIH over the Railroads.

The two restrictions referred to by CFI were not adopted in the Tariffs. In fact, with regard to the speed and permit process, the Tariffs adopted different processes than those in the SOP. Specifically the Tariffs state that the trains will “travel at the appropriate speed for safe operation based on the conditions of the rail line, time of year, weather, and any other relevant factors deemed relevant by [Railroads] operating and/or safety personnel.” See the Purpose section of each of the Tariffs. Instead of requiring a shipper of TIH/PIH to seek a permit five days in advance of receipt by the Railroads, the Tariffs require:

Upon tender of a car or cars containing TIH-PIH to a rail carrier for delivery to [Railroad] in interchange for delivery to the receiver; the shipper shall give notice of the shipment to [Railroad] by providing [Railroad] a copy of the Notice attached as Appendix A hereto. The Notice must be completely filled out and tendered to [Railroad] by the instructions specified on the bottom of Appendix A. [Railroad] shall use the Notice to track the car in order to be able to comply with the regulatory requirements once the car or cars arrive for interchange to [Railroad].

Tariffs Item 1000(B).

The PowerPoint Presentation is not an agreement between the Railroads and CFI nor is it a tariff adopted by IORY, PNC, or MSR. The PowerPoint Presentation was used as part of ongoing discussions involving an offer of a contract to CFI that CFI immediately rejected without any effort to find common issues to improve the safety of shipping its dangerous chlorine. It is a non-binding document meant for discussion purposes as made clear by the emails sent between Mr. Harry Shugart and Mr. Kevin Conn of CFI. See Exhibit A.

The Tariffs do not create a case or controversy that needs to be resolved. IORY, PNC, and MSR have adopted the Tariffs to address TIH/PIH movements on their individual lines in compliance with the Rules.⁵

CFI asserts that the Board should find the Tariffs invalid and unenforceable because of a "number of new purported operational safety measures, including special train service" that exceed the safety standards imposed by the Rules. Petition at 5. Except for the notice discussed above, CFI does not mention any of the other safety measures that it objects to in the Tariffs. Nor does CFI state which of the Rules are exceeded by the Tariffs. Each of the Railroads' tariff terms are designed to allow the Railroads to meet the safety requirements contained in the Rules.

Under 49 CFR §174.9, when hazardous material is placed in a train including a new train because of interchange, the carrier must inspect each rail car at ground level for required

⁵ CFI's argument that RailAmerica directed the Railroads to publish the Tariffs is not relevant to the issues presented in this proceeding.

markings, labels, placards, securement of closures, and leakage. 49 CFR §174.9 (a). The cars must also be visually inspected for signs of tampering, suspicious items, and other signs that the security of the car may have been compromised. 49 CFR §174.9 (b). If the cars do not conform to the safety and security requirements the carrier may not transport the rail car until the deficiencies are corrected. 49 CFR §174.9 (c). If there is any indication of tampering the rail carrier must take appropriate action to ensure the security of the rail car and its contents have not been compromised before accepting the car for further movement. 49 CFR §174.9 (d).

Under 49 CFR §174.14, a carrier must forward each shipment of hazardous materials promptly and within 48 hours (excluding Saturdays, Sundays, and holidays). A tank car with flammable gas, poisonous gas, or flammable liquid “cannot be held at any point, subject to forwarding orders, so as to defeat the purpose of this section” 49 CFR §174.14(b). The goal of section 174.14 is to reduce transit time for TIH/PIH cars, which will reduce the risk of accidents, incidents, vandalism or other safety or security related problems. See *Hazardous Materials: Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments*, PHMSA Docket No. RSPA-04-18730 (HM-232E)), 71 FR 76834, (Dec. 21, 2006). Moving TIH/PIH cars in priority trains helps further the goals of section 174.14. These priority trains will depart within the 48 hour period required by 49 CFR §174.14. Priority service will provide more expeditious service and safer transit to the receiver because, unlike with cars handled in the normal course of business, cars handled in priority trains will not have to move through yards to be switched onto regular trains and will not be starting and stopping at different shippers along the route to the receiver.

To meet the requirement of 49 CFR Part 174 and move the cars quickly from interchange to destination, the Railroads must know when the cars will reach their lines. Notifying the

Railroads at the time the car is tendered to a rail carrier for delivery to the Railroads allows the Railroads to track the movement of the car before it reaches IORY's, PCN's, or MSR's lines. Being able to track the car enables Railroads to comply with the Rules and to efficiently utilize their resources including locomotives, crews, and equipment to expeditiously move TIH/PIH cars. With the knowledge of where the cars are and when they will reach the Railroads' lines, the Railroads can verify that the recipient will be able to receive the cars when they are delivered so that the Railroads do not run afoul of 49 CFR §174.14. The ability to track the car also allows the Railroads to arrange to have an inspector available when the car is received by the Railroad, as required by 49 CFR §§174.3 and 174.9, and to have a locomotive and crew available to move the car in compliance with 49 CFR §174.14.

Unlike in *Consolidated Rail Corp. v. Interstate Commerce Comm'n*, 646 F.2d 642 (D.C. Cir. 1981), which is cited by CFI, the Rules specifically provide for additional safety measures “[w]hen local conditions make the acceptance, transportation, or delivery of hazardous materials unusually hazardous, local restrictions may be imposed by the carrier” 49 CFR §174.20(a). Thus, the Railroads may impose additional safety measures based on local conditions as long as it reports those conditions.⁶

⁶ The requirement for imposition of stricter conditions is that the rail carrier report to the Bureau of Explosives for publication the “full information as to any restrictions which it imposes against the acceptance, delivery, or transportation of hazardous materials, over any portion of its lines....” 49 CFR §174.20(b). CFI cites to *Granite State Concrete Co., Inc. v. Boston and Maine Corporation and Springfield Terminal Railway Company*, STB Docket No. 42083 (STB served September 15, 2003) for the proposition that the Federal Railroad Administration has “primary jurisdiction, expertise and oversight responsibility in rail safety matters.” Petition at 5. The citation omits the language in the ellipsis that states “Of course, the Board also has responsibility for promoting a safe rail transportation system.” CFI’s erroneous conclusion is based on a misreading of the Board’s decision. Moreover, if CFI were correct in the principle that it attempts to create from its incomplete reference to Board authority that safety issues are to be resolved by FRA, then the Board would not be the agency to resolve the issues raised by CFI

It is clear from the language of 49 CFR §174.20 (a) that the Rules are not exhaustive, but leave room for private industry to supplement the regulations based on line specific concerns.⁷

The declaratory order process is inappropriate for determining rate reasonableness.

By using the declaratory order process, CFI is seeking to have the tariff rates declared invalid and unenforceable without submitting the tariff rates to the rate reasonableness inquiry that would be provided in a formal complaint filed under 49 U.S.C. §10702(a).

It has been recognized that there is “a conceptual overlap between railroads’ ‘practices’ and their ‘rates.’” *Union Pacific Railroad v. ICC* (“*Union Pacific*”), 867 F.2d 646, 649-650 (D.C. Cir. 1989). Although CFI never specifically argues that the rates charged by the Railroads for moving TIH/PIH are unreasonably high, CFI does highlight the rates (Petition at 3-4) and claims that the Tariffs are “excessively ... costly.” Petition at 5. Except for the rates, CFI does not identify any other provisions of the Tariffs that are excessively costly.

In the Petition, the so-called excessive cost “is manifested exclusively in the level of rates that [CFI is] charged.” *Union Pacific* at 649-650. The Railroads contend that in order for the Board to address the excessive cost issue raised by CFI, CFI is requesting the Board to “engage in rate regulation.” under the guise of a declaratory order, a practice proscribed by *Union Pacific*. The Board addressed a similar issue in *Cargill, Incorporated v. BNSF Railway Company*, STB Docket No. NOR 42120 (STB served January 4, 2011) at 6, and concluded that the “claim would necessarily focus on whether the level of the rate is justified, contrary to *Union Pacific*” and therefore dismissed the rate reasonableness element of the unreasonable practice complaint.

and there would be no case or controversy requiring the Board to open a declaratory order proceeding.

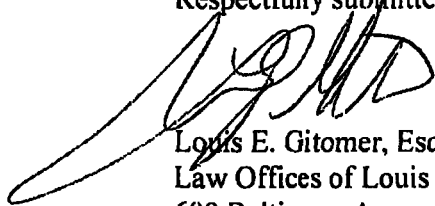
⁷ State government is also able to supplement the Rules. 49 CFR §174.2.

The Railroads request that the Board recognize CFI's Petition as a thinly veiled attempt to force the Board to find the rates under the Tariffs unreasonable in a declaratory order proceeding instead of in a rate reasonableness complaint proceeding.

CONCLUSION

IORY, MSR, and PCN respectfully request that the Board deny CFI's Petition for declaratory because there is no case or controversy that can be resolved under the declaratory order process.

Respectfully submitted,



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Kenneth G. Charron, Esq.
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Alabama Gulf Coast Railway LLC
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Jacksonville, FL 32256
(904) 538-6329

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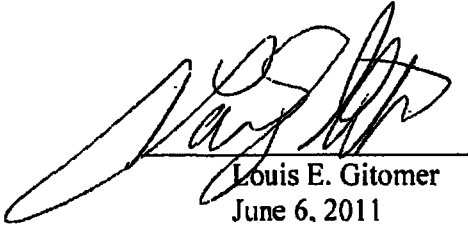
Attorneys for: INDIANA & OHIO
RAILWAY COMPANY, POINT
COMFORT AND NORTHERN
RAILWAY COMPANY, AND MICHIGAN
SHORE RAILROAD, INC.

Dated: June 6, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served electronically and by first class mail postage pre-paid on

Patrick E. Groomes
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005



Louis E. Gitomer
June 6, 2011

EXHIBIT A-EMAIL EXCHANGE

Shugart, Harry (GPRK)

From: Shugart, Harry (GPRK)
Sent: Tuesday, April 19, 2011 5:15 PM
To: kconn@cfindustries.com
Cc: Shugart, Harry (GPRK)
Subject: Request for NH3 freight rates
Attachments: TIHPIH(C1) pptx

Kevin,

I would like to talk to you about these moves. I couldn't find your number in the string, below. If you would call me that would be great.

I have sent your request to the GM for train plans so we can determine how many crews and other resources it will take so I can have it costed effectively. As you are aware (from Doug), we handle TIH/PIH in dedicated train service at reduced speeds, so the dynamics are different than regular manifest train service. I will get you a term sheet for the moves as soon as possible.

In the interim I am attaching a presentation that outlines our policy and procedure for moves of this type. This was the presentation that we presented starting early last year to industry representatives. It is slightly dated, but will still provide a good framework of our method for addressing the safety concerns associated with TIH/PIH.

I look forward to hearing from you soon.

Harry H. Shugart
Senior Manager Marketing Services
RailAmerica
904-538-6133
Cell 904-545-9895
Harry.shugart@railamerica.com

From: Ernstes, Doug (IORY)
Sent: Wednesday, April 13, 2011 2:13 PM
To: Shugart, Harry (GPRK)
Cc: Kelly, William (IORY); Byrd, Tod (IORY); Shefelbine, James (GPRK)
Subject: FW: Request for NH3 freight rates

Harry,

CF Industries is seeking Rule 11 pricing on IORY for anhydrous ammonia moving in tank car from CN/Flat Rock interchange to Uniopolis, OH, and Melvin, OH. Trupointe Coop is the consignee at both locations. Volume to these points was zero over the past season. Both have 'terminals' that are used to feed ammonia to its farmer coop members. The 2010 season saw all volume move via truckload carrier. Based on 2009 volume, I'd estimate volume into Uniopolis would likely be less than 12 cars per year. Volume into Melvin could be a couple dozen based on 2009 volume. Note the Wilmington address below is Wilmington for mailing purposes, but the correct rail station is Melvin.

Please advise if you'd like to quote direct to CF, as you did with the Occidental rate recently, or if you'd like me to handle. Thanks.

Doug

From: Conn, Kevin [mailto:kconn@cfindustries.com]
Sent: Tuesday, April 12, 2011 5:40 PM
To: Ernstes, Doug (IORY)

Cc: Fout, Scott; Fickler, John
Subject: RE: Request for NH3 freight rates

Doug,

It is Trupointe Cooperative at 310 Starbuck Road, Wilmington, OH 45177

Kevin Conn
Manager Transportation Services
CF Industries
4 Parkway North
Suite 400
Deerfield, IL 60015

From: Ernstes, Doug (IORY) [mailto:Doug.Ernstes@RailAmerica.com]
Sent: Tuesday, April 12, 2011 3:14 PM
To: Conn, Kevin
Cc: Fout, Scott; Fickler, John
Subject: RE: Request for NH3 freight rates

Kevin,

With regard to the Wilmington destination, can you confirm the consignee? We have 2 potential receivers at/near Wilmington. I want to insure we are offering prices to the correct location. Thank you.

Douglas E. Ernstes
Director Marketing & Sales
513.618.6468 (O) | 513.519.7928 (M) | doug.ernstes@railamerica.com
Indiana & Ohio Railway | 11427 Reed Hartman Highway, Suite 207, Cincinnati, OH 45241
Customer Service 989.797.5136 | TLC-Midwest-IORY@RailAmerica.com

From: Conn, Kevin [mailto:kconn@cfindustries.com]
Sent: Tuesday, April 12, 2011 3:45 PM
To: Ernstes, Doug (IORY)
Cc: Fout, Scott; Fickler, John
Subject: Request for NH3 freight rates

Doug,

Per our telecom today please quote on the movement of NH3 (stcc: 2819815) from the interchange with the CN at Flat Rock, MI to the following locations on the IORY:

Uniopolis, OH (zip: 45888)
Wilmington, OH (zip: 45177)

The cars will originate on the CN at Courtright, ON.

If you have any questions please call me at 847-405-2862.

Kevin Conn
Manager Transportation Services
CF Industries
4 Parkway North
Suite 400
Deerfield, IL 60015

The information contained in this communication is confidential, and intended solely for the use of the addressee. It is the property of CF Industries, Inc. Unauthorized use, disclosure, forwarding, or copying of this communication or any part thereof is strictly prohibited, and may be unlawful. If you have received this communication in error, please notify the sender immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.

The information contained in this communication is confidential, and intended solely for the use of the addressee. It is the property of CF Industries, Inc. Unauthorized use, disclosure, forwarding, or copying of this communication or any part thereof is strictly prohibited, and may be unlawful. If you have received this communication in error, please notify the sender immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.

TIH/PIH Standard Operating Practice (SOP)

Implementation Proposal

A proposal to modify RailAmerica's policies and procedures for handling TIH/PIH commodities.

RA-AMC-103

A cross functional team of RailAmerica employees was charged with developing operating practices that go beyond "industry standards" in order to further reduce the risk of moving TIH/PIH commodities.

2

SOP Recommendations

The team recommended that railroads owned by RailAmerica move all TIH/PIH shipments in dedicated train service at no more than 10 MPH.

The team recommended that a qualified mechanical employee inspect every TIH/PIH car before pulling the car from the interchange track.

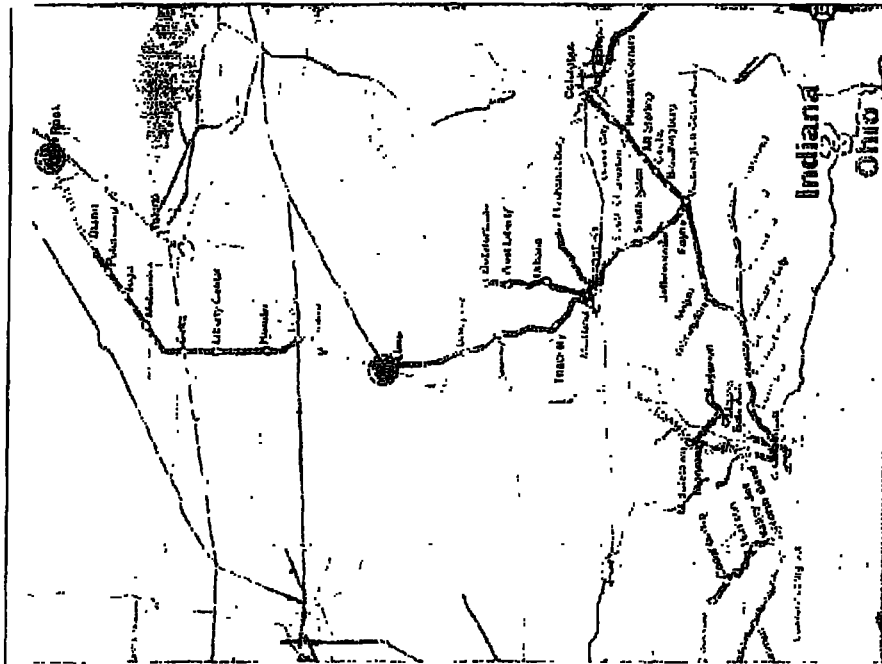
The team recommended that employees accompany the shipment at all times, even if outside of a High Threat Urban Area (HTUA), as long as the shipment is on RailAmerica property and until the receiving entity acknowledges receipt of the shipment.

The team recommended that a permitting process be implemented to manage the movement of each TIH/PIH shipment.

Because of the varying operating conditions across all RailAmerica properties, the railroads that move TIH/PIH commodities will have to create specific operating procedures.

- Some railroads may choose to use "Go-Teams" to augment existing transportation crews.
- Some roads may request advance notification from Class I railroads of movements of TIH/PIH commodities.
- Physical interchange procedures will have to be developed for each property
- In extreme situations, some roads may need additional locomotives and crews.

The local IORY operating team developed an operating plan for the movement of anhydrous ammonia from Lima, OH to interchange with CN at Flat Rock, MI.



OPERATING PLAN

1. NS advance notice sent to IORY.
2. IORY Mechanical team member meets the NS crew at interchange track in Lima
3. IORY Mechanical inspects car and signs NS chain of custody and waits with car.
4. Lima Switcher pulls car from NS interchange track to North End of Lima Yard and sets car over. Lima Switcher attends car.
5. Special Train crew moves locomotive to car and takes control of car.
6. Special Train crew moves car from Lima to Delta. MP 130 to MP 74 – 56 miles.
7. Crew one vans back to Lima.
8. Special Train crew number two goes on duty at Delta. Boards train and takes position of car / train.
9. Crew two moves car from Delta to Flat Rock. MP 74 to MP 18 – 56 Miles.
10. Crew runs light engine back to Delta.
11. Engine runs on "normal" freight train next night to Lima.

The actual movement would be managed by a new permitting process that would allow RailAmerica to plan and monitor discrete TIH/PIH movements. The business process will be managed by a new Optional Services tariff.

4

Optional Services Catalog
TIH/PIH Permitting

FOR \$500

PROTECTING OUR NEIGHBORS
RailAmerica is committed to protecting the health, safety and environment of the communities we serve. We have implemented a comprehensive environmental and safety program that includes regular monitoring and reporting to the public. We are committed to transparency and accountability in all of our operations.

Specialized Train Services
RailAmerica offers a variety of specialized train services to meet the needs of our customers. These services include:

- Intermodal Services:** We provide a full range of intermodal services, including drayage, storage, and transfer of containers and trailers.
- Unit Train Services:** We offer unit train services for bulk commodities, such as coal, grain, and minerals.
- Specialized Equipment:** We have a fleet of specialized equipment, including flatcars, hopper cars, and tank cars, to transport a wide variety of goods.

Indiana & Ohio

OPTIONAL SERVICES CATALOG

OPTIONAL SERVICE 1: TIH/PIH PERMITTING
This service is available for customers who require a TIH/PIH permit for their train movements. The fee for this service is \$500 per permit.

OPTIONAL SERVICE 2: SPECIALIZED TRAIN SERVICES
This service is available for customers who require specialized train services. The fee for this service is \$500 per train movement.

OPTIONAL SERVICE 3: INTERMODAL SERVICES
This service is available for customers who require intermodal services. The fee for this service is \$500 per container or trailer movement.

These Documents Have Not Undergone
Legal Review

Indiana & Ohio

TIH/PIH COMMODITY TRANSPORTATION PERMIT APPLICATION

APPLICANT INFORMATION

Company Name: **RAILAMERICA**
Address: **10000 W. 100th Ave., Suite 100, Overland Park, KS 66211**
Phone: **(913) 241-1000**
Fax: **(913) 241-1001**
E-mail: **tihipih@railamerica.com**

PERMIT INFORMATION

Permit Number: **10000**
Permit Type: **TIH/PIH**
Commodity: **COAL**
Origin: **WEST VIRGINIA**
Destination: **INDIANA**
Route: **INDIANA**
Train Number: **10000**
Train Date: **10/1/2010**
Train Time: **10:00 AM**

APPLICANT REPRESENTATIVE

Name: **JOHN DOE**
Title: **TIH/PIH MANAGER**
Company: **RAILAMERICA**

APPLICANT SIGNATURE

Signature: **[Signature]**
Date: **10/1/2010**

APPLICANT CONTACT INFORMATION

Phone: **(913) 241-1000**
Fax: **(913) 241-1001**
E-mail: **tihipih@railamerica.com**

APPLICANT CERTIFICATION

I, the undersigned, certify that the information provided in this application is true and correct to the best of my knowledge and belief.

APPLICANT AGREEMENT

I agree to pay the fee for this permit and to comply with all applicable regulations and rules of the State of Indiana and the State of Ohio.

APPLICANT RELEASE

I release the State of Indiana and the State of Ohio from all liability for any damages or losses resulting from the use of this permit.

RailAmerica

We will designate a new position to manage and maintain the new process. The position will be responsible for monitoring all TIH/PIH movements on RailAmerica properties.

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Manager Special Services (Roles and Responsibilities)

Create SOP's for the movement of TIH/PIH shipments with local operating teams.

Coordinate with Class I partners and customers the movement of TIH/PIH commodities.

Initiate movements of shipments with local railroad operating teams.

Monitor TIH/PIH carloads on RailAmerica properties.

Coordinate communication strategy for customers, Class I's and local communities.

RailAmerica

The Manager Special Services (MSS) will manage the shipment up to the time that the railroad takes physical control of the shipment. After that time the MSS will monitor and coordinate the movement and delivery with the railroad, customer and any interline parties.

NO LESS
THAN 5 DAYS
BEFORE
RECEIPT OF
SHIPMENT

MANAGER SPECIAL SERVICES PROCESS

1. Customer applies for transportation permit.
2. MSS confirms that a transportation rate exists.
3. MSS confirms that an operating plan exists for the movement.
 - A. If no operating plan exists MSS coordinates with railroad to create new operating plan.
4. MSS notifies Dispatcher that movement is pending.
 - A. The Dispatcher will notify local emergency response teams.
5. MSS notifies railroad that customer wishes to initiate a movement.
6. MSS notifies destination customer or railroad that the railroad will be making a delivery.
7. MSS monitors all aspects of movement while on RA

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LOCAL OPERATING TEAM PROCESS

1. NS advance sent to IORY.
2. IORY Mechanical team member meets the NS crew at interchange track in Lima.
3. IORY Mechanical inspects car and signs NS chain of custody and waits with car.
4. Lima Switcher pulls car from NS interchange track to North End of Lima Yard and sets car over. Lima Switcher attends car.
5. Special Train crew moves locomotive to car and takes control of car.
6. Special Train crew moves car from Lima to Delta. MP 130 to MP 74 - 56 miles.
7. Crew one vans back to Lima.
8. Special Train crew number two goes on duty at Delta. Boards train and takes position of car / train.
9. Crew two moves car from Delta to Flat Rock. MP 74 to MP 18 - 56 Miles
10. Crew runs light engine back to Delta.
11. Engine runs on "normal" freight train next night to Lima.

FUNCTIONAL
HAND-OFF

DELIVERY TO
RAILAMERICA
DESTINATION

RailAmerica